

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 821
PROPOSED COMMITTEE SUBSTITUTE H821-CSBVa-28 [v.14]
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Short Title: Various Land-Use Law Changes/Clarifications.

(Public)

Sponsors:

Referred to:

May 5, 2021

A BILL TO BE ENTITLED
AN ACT TO REQUIRE THE AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS WHEN A COURT FINDS THAT A LOCAL GOVERNMENT IS NOT THE PREVAILING PARTY IN AN APPEAL INITIATED BY THE LOCAL GOVERNMENT REGARDING A DEVELOPMENT APPROVAL DECISION; TO CLARIFY LOCAL GOVERNMENT AUTHORITY OVER LOCAL PLANNING AND DEVELOPMENT REGULATION; TO REQUIRE CITIES TO PROVIDE WATER AND SEWER SERVICES FOR CERTAIN PROPERTIES IN AREAS OF EXTRATERRITORIAL JURISDICTION; AND TO PROVIDE AN APPROPRIATION TO THE SCHOOL OF GOVERNMENT OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 6-21.7 reads as rewritten:

"§ 6-21.7. Attorneys' fees; ~~cities or counties~~ local governments acting outside the scope of their authority.

(a) In any action in which a ~~city or county~~ local government is a party, upon a finding by the court that the ~~city or county~~ local government violated a statute or case law setting forth unambiguous limits on its authority, the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the ~~city's or county's~~ local government's action.

(b) ~~In any action in which a city or county is a party, upon finding by the court that the city or county took action inconsistent with, or in violation of, G.S. 160D-108(b) or G.S. 143-755, the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the local government's failure to comply with any of those provisions.~~ In ~~all other matters,~~ matters in which a local government is a party, the court may award reasonable attorneys' fees and costs to the prevailing private ~~litigant.~~ litigant, except the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the local government's action as follows:

(1) Upon a finding by the court that the local government took action inconsistent with, or in violation of, G.S. 160D-108(b).

(2) Upon a finding by the court that the local government took action inconsistent with, or in violation of, G.S. 143-755.

(3) Upon a finding by the court that the local government is not the prevailing party in an appeal initiated by the local government regarding a development approval decision under Chapter 160D of the General Statutes.

(c) For purposes of this section, the following terms apply:

(1) Local government. – As defined in G.S. 160D-102(22).



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(2) ~~"unambiguous" means that~~ Unambiguous. – the ~~The~~ limits of authority are not reasonably susceptible to multiple constructions."

SECTION 1.(b) This section becomes effective October 1, 2021, and applies to civil actions or appeals commenced on or after that date.

SECTION 2.(a) Article 1 of Chapter 160D of the General Statutes is amended by adding a new section to read:

"§ 160D-112. Clarification of local government authority.

Unless otherwise provided by local act, local governments have no authority under this Chapter to do any of the following:

(1) Impose impact fees for development.

(2) Condition a development approval on the existence of a community benefits agreement. The term "community benefits agreement" means a development-specific arrangement between a developer and persons affected by the development that details the development's contributions to the persons affected or ensures support for the development by the persons affected.

(3) Require a developer to provide funds for affordable housing or construct, set aside, or designate one or more dwellings or developments as affordable housing.

(4) Require a completed traffic impact analysis prior to a development approval.

(5) Require a developer to construct a greenway."

SECTION 2.(b) G.S. 160D-703(b) reads as rewritten:

"(b) Conditional Districts. – Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, a local government may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, ~~impact fees~~, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site. The zoning regulation may provide that defined minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification of the conditions and standards in a conditional district shall follow the same process for approval as are applicable to zoning map amendments. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved apply only to those properties whose owners petition for the modification."

SECTION 3.(a) Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-329.1. Water and sewer services in extraterritorial areas.

(a) A city must provide water and sewer services to a property if the city has water and sewer capacity and all the following conditions are met:

(1) The city exercises extraterritorial jurisdiction over the property under Article 2 of Chapter 160D of the General Statutes.

(2) The city extends a development regulation to the extraterritorial area where the property is located.

(3) The owner of the property submits a request for water and sewer services to the governing board no earlier than one year after the property was added to the area of extraterritorial jurisdiction.

(b) For purposes of this section, the following terms apply:

(1) City. – As defined in G.S. 160D-102(5).

(2) Development regulation. – As defined in G.S. 160D-102(14).

(3) Governing board. – As defined in G.S. 160D-102(17).

(4) Owner. – As defined in G.S. 160D-102(18).

(5) Property. – As defined in G.S. 160D-102(27)."

SECTION 3.(b) This section becomes effective October 1, 2021, and applies to property added to the extraterritorial jurisdiction of a city on or after that date.

SECTION 4. There is appropriated from the General Fund the sum of ten thousand dollars (\$10,000) in nonrecurring funds for the 2021-2022 fiscal year to the School of Government of the University of North Carolina at Chapel Hill for the purposes of providing free training to local government board members and managers on the implementation of this act.

SECTION 5. Except as otherwise provided, this act becomes effective October 1, 2021.